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Federal Communications Commission

DA 98-2114

DISC

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Cross City, Florida)

)  
)  
)  
) MM Docket No. 98-190  
) RM-9317  
)  
)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 14, 1998

Released: October 23, 1998

Comment Date: December 14, 1998

Reply Date: December 29, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Tony Downes ("Downes") proposing the allotment of Channel 249A at Cross City, Florida, as that community's second FM broadcast service. Downes indicated that he would file an application for Channel 249A at Cross City if a channel is allotted to the community.

2. We believe the public interest would be served by proposing the allotment of Channel 249A at Cross City, Florida, since it could provide the community with additional broadcast service.<sup>1</sup> A Commission analysis indicates that Channel 249A can be allotted to Cross City, Florida, in compliance with the Commission's minimum distance separation requirements provided there is a site restriction 2 kilometers (1.3 miles) west of the community.<sup>2</sup> The site restriction removes a short spacing with Channel 247C2 station WSKY, Micanopy, Florida.<sup>3</sup>

<sup>1</sup> Cross City has a population of 2,041 persons according to the 1990 census. The 1998 Rand McNally Commercial Atlas indicates that Cross City has its own post office and zip code, is incorporated and is the County Seat for Dixie County.

<sup>2</sup> The coordinates for Channel 249A at Cross City are 29-38-35 and 83-08-28.

<sup>3</sup> Although Channel 249A at Cross City is short spaced to Channel 249A, Micanopy, Florida, we note that the license for Station WSKY, Micanopy was modified to specify operation on Channel 247C2 in MM Docket No. 95-195. See Report and Order, 8 FCC Rcd 2197 (1993); recon. denied, 8 FCC Rcd 8515 (1993) and affirmed, 11 FCC Rcd 4641 (1996). Station WSKY has a construction permit for Channel 247C2 that is fully spaced to the proposed allotment at Cross City (BPH-

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Cross City, Florida	295C1	249A, 295C1

4. IT IS ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* to the following:

ECI License Company, L.P.  
Station WSKY-FM  
401 City Avenue, Suite 409  
Bala Cynwyd, Pennsylvania 19004

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 14, 1998**, and reply comments on or before **December 29, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Tony Downes  
3092 Harbor Hills Road  
Dunnellon,  
Florida 34431

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.